



GSA Federal Acquisition Service

November 15, 2012

**FAS INSTRUCTIONAL LETTER 2013-01****MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES**

FROM: HOUSTON W. TAYLOR   
ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: Affirmative Procurement of Biobased Products under Service Contracts

- A. Purpose: The purpose of this Instructional Letter (IL) is to provide guidance on implementation of the revision to FAR clause 52.223-2, *Affirmative Procurement of Biobased Products Under Service and Construction Contracts* and the Interim Class Deviation dated November 2, 2012.
- B. Background: Federal agencies are required by the Farm Security and Rural Investment Act, as amended, to report annually to the Office of Federal Procurement Policy (OFPP) on the type and dollar value of the biobased products they purchase. FAR clause 52.223-2 (see Appendix A), *Affirmative Procurement of Biobased Products Under Service and Construction Contracts*, was revised on April 18, 2012, to require contractors to report annually and at the end of their contracts on the product types and dollar value of any U.S. Department of Agriculture (USDA)-designated biobased products purchased during the fiscal year.

The revised clause also requires agencies to provide the name, phone number, and email address of an environmental point of contact for the contract to receive the reports. It is the responsibility of the prime contractor to report this information to each agency. The revised clause was effective on May 18, 2012.

For FY2012 reports, the USDA's BioPreferred Program established a reporting template and reporting portal for contractors to report their purchases of biobased products. For contracts with an effective date of May 18, 2012, through September 30, 2012, contractors will report through the USDA portal: [www.biopreferred.gov](http://www.biopreferred.gov).

The list of USDA-designated biobased products can be found on USDA's BioPreferred web site, [www.biopreferred.gov](http://www.biopreferred.gov) or the Green Products Compilation, [www.sftool.gov/greenprocurement](http://www.sftool.gov/greenprocurement).

- C. Effective Date: Date of signature.
- D. Expiration Date: This IL remains in effect until it is cancelled or incorporated into a handbook.
- E. Applicability: This IL applies to all GSA/FAS acquisition activities. This IL also applies to Department of Veterans Affairs (VA) acquisition activities awarding and administering Federal Supply Schedule (FSS) contracts.
- F. Reference Regulations: Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008; FAR Parts 23 and 52, and 7 CFR Part 3201; Interim Class Deviation, *Federal Acquisition Regulation (FAR) Clause 52.223-2*, dated November 2; and

Civilian Agency Acquisition Council letter, *Class Deviation from the Federal Acquisition Regulation (FAR) extending the Biobased Product Reporting Requirement*, dated October 29, 2012.

G. Instructions/Procedures:

I. Federal Supply Schedules

A. Solicitation Refresh

- i. Solicitations must be refreshed in the next regularly scheduled refresh window in accordance with [IL 2011-04, Federal Supply Schedule \(FSS\) Solicitation Refresh Management](#) to include FAR clause 52.223-2. FAR clause 52.223-2 will be inserted, at a minimum, in the following Federal Supply Schedules:

- 00CORP, The Consolidated Schedule
- 03FAC, Facilities Maintenance and Management
- 84, Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response
- 871, Professional Engineering Services
- 874V, Logistics Worldwide
- 899, Environmental Services
- 70, General Purpose Commercial Information Technology Equipment, Software, and Services

If the scope of a Federal Supply Schedule changes to include relevant products that would support acquisition of biobased products for service or construction contracts, any subsequent solicitation shall include FAR clause 52.223-2.

B. Pre-Award

- i. For eOffers in-house at time of solicitation refresh, the Contracting Officer shall direct the offeror to go back into the eOffer system and “accept” the latest refresh. Offerors will also have the opportunity to withdraw their offers.
- ii. For in-house offers submitted after the solicitation refresh, please ensure contractors accept the updated solicitation prior to contract award.

C. Post-Award

- i. Mass Mod: All affected Schedule contracts shall be modified to incorporate FAR clause 52.223-2. This shall be accomplished through a typical mass modification that is issued from Solicitation Writing System (SWS) following a solicitation refresh. There is no need for a separate modification.

D. Blanket Purchase Agreements

- i. FAR clause 52.223-2 shall be incorporated by reference into new orders awarded against Blanket Purchase Agreements (BPAs) through applicable Schedules once modified at the contract level.

II. Other FAS contracts (i.e., Government-wide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), Indefinite Delivery/Indefinite Quantity (IDIQs), other open market contracts, under FAR Parts 12, 13, 14, and 15)

- A. FAR clause 52.223-2 shall be included in applicable solicitations.
- B. Applicable existing contracts and open market BPAs shall be modified to incorporate FAR clause 52.223-2.

III. Task/Delivery Order Information for Applicable FAS Procurements

A. Procurements for Internal FAS Use

FAR 52.223-2 requires that the contractor report to the environmental point of contact identified in paragraph (d) of the clause, with a copy to the Contracting Officer at the ordering agency, the product types and dollar value of any USDA- designated biobased products purchased by the Contractor under the service or construction contract during the preceding fiscal year. This information is required to be completed by the ordering agency, at the task/delivery order level. Each ordering entity, via the designated environmental point of contact, is responsible for collecting this information from the prime contractor.

The information required in paragraph (d) of clause 52.223-2 will not be completed at the contract vehicle level (e.g., Schedule contract, GWAC or MAC). However, it will be completed, and biobased product information collected, for purchases of services *for FAS use*. In the blank in paragraph (d), Contracting Officers shall insert [fasgreenpurchasing@gsa.gov](mailto:fasgreenpurchasing@gsa.gov) as the contact information for an environmental point of contact.

For FY 2012 reporting only, a November 2, 2012, interim class deviation provides for reporting to the USDA portal rather than to the agency environmental point of contact. The reporting deadline is extended to December 31, 2012. (See Appendix B.)

FAS contracting officers are authorized and required to take the following actions, unless the contracting officer has documentation that indicates the contractor has already submitted an annual or end-of-contract report for FY 2012:

- a) Notify contractors that are subject to the biobased reporting requirements of FAR 52.223-2 for Government Fiscal Year 2012 that the reporting deadline has been extended to December 31, 2012.
- b) Direct such contractors to electronically report at <http://www.biopreferred.gov/FARReporting/FARReporting.xhtml1>.
- c) Continue to monitor compliance by determining whether the contractor has provided a copy of its biobased purchases report

to the contracting officer pursuant to paragraph (c)(1) of FAR clause 52.223-2.

If a contractor submitted a report to a Contracting Officer in October 2012, please ask the contractor to go to <http://www.biopreferred.gov/FARReporting/FARReporting.xhtm1> and enter their information accordingly.

Each FAS office will be responsible for confirming that its applicable contractors submitted this information on behalf of FAS contracting activities.

This class deviation is an interim measure until replacement text for FAR 52.223-2 can be developed and approved. Once it becomes available, the replacement clause text will be prescribed for use in new solicitations and contracts for services and construction.

#### B. Assisted Acquisitions

FAS contracting officers shall engage the funding agency to complete the information required in paragraph (d) of clause 52.223-2. Each servicing agency will be required to refer its contractors to the BioPreferred web site to report on applicable biobased product information under service and construction contracts, including assisted acquisitions.

## Appendix A

### FAR clause 52.223-2

#### **Affirmative Procurement of Biobased Products Under Service and Construction Contracts (July 2012)**

\* \* \* \* \*

(c) In the performance of this contract, the Contractor shall—

- (1) Report to the environmental point of contact identified in paragraph (d) of this clause, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30;
- (2) Submit this report no later than—
  - (i) October 31 of each year during contract performance; and
  - (ii) At the end of contract performance; and
- (3) Contact the environmental point of contract to obtain the preferred submittal format, if that format is not specified in this contract.

(d) The environmental point of contact for this contract is: \_\_\_\_\_

[Contracting Officer shall insert full name, phone number, and email address. In addition, the Contracting Officer may include the agency website for reporting.]

## Appendix B

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES  
FROM: JOSEPH A. NEURAUTER  
SENIOR PROCUREMENT EXECUTIVE  
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: Interim Class Deviation, Federal Acquisition Regulation (FAR)  
Clause 52.223-2, Affirmative Procurement of Biobased Products  
Under Service and Construction Contracts

1. **Background:** Section 5 of the February 21, 2012, Presidential Memorandum "Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement" required that contractor reporting on biobased purchases be added to FAR clause 52.223-2. This clause applies to service and construction contracts, unless the contract will not involve the use of biobased items. The FAR final rule became effective on May 18, 2012, and the clause underwent minor revision again on July 26, 2012. Section 5 of the Presidential Memorandum also required the Secretary of Agriculture, in coordination with the Chief Acquisition Officers Council, to develop a reporting template.

The contractor reporting requirements are described in paragraph (c) of FAR clause 52.223-2. Contractors that were awarded contract actions that included the May or July 2012 version of FAR 52.223-2 should have reported for Government Fiscal Year (FY) 2012 no later than October 31, 2012. Reports have been delayed in many cases because the reporting template only became available to contractors a few days before the October 31, 2012 deadline, around the time of Hurricane Sandy. The attached Civilian Agency Acquisition Council letter therefore requested agencies to process class deviations to extend the FY 2012 reporting deadline to December 31, 2012 and to require contractors to use the reporting template at <http://www.biopreferred.gov/FARReporting/FARReporting.xhtml>.

2. **Applicability:** This memorandum applies to existing contracts and task orders for services or construction that meet all of the following criteria:

- a) That include the May or July 2012 version of FAR clause 52.223-2;
- b) That were awarded between May 18, 2012, and September 30, 2012; and
- c) Where the period of performance began prior to October 1, 2012.

For task orders, contracting officers are reminded to also check the parent indefinite-delivery contract for the May or July 2012 version of FAR clause 52.223-2.

3. **Class Deviation:** This class deviation is an interim measure until replacement text for FAR 52.223-2 can be developed and approved. Once it becomes available, the replacement clause text will be prescribed for use in new solicitations and contracts for services and construction.

GSA contracting officers are authorized and required to take the following actions, unless the contracting officer has documentation that indicates the contractor has already submitted an annual or end-of-contract report for FY 2012:

- a) Notify contractors that are subject to the biobased reporting requirements of FAR 52.223-2 for Government Fiscal Year 2012 that the reporting deadline has been extended to December 31, 2012.
- b) Direct such contractors to electronically report at <http://www.biopreferred.gov/FARReporting/FARReporting.xhtml>.
- c) Continue to monitor compliance by determining whether the contractor has provided a copy of its biobased purchases report to the contracting officer pursuant to paragraph (c)(1) of FAR clause 52.223-2.

Questions regarding this memorandum should be directed to Mr. Mitchell Gasbarra at (202) 357-5846 or [mitchell.gasbarra@gsa.gov](mailto:mitchell.gasbarra@gsa.gov).

Attachment

October 29, 2012

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA  
FROM: LAURA AULETTA  
CHAIR  
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) extending  
the Biobased Product Reporting Requirement

The clause at FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, requires reporting of biobased products under service and construction contracts, for the previous Government fiscal year, by October 31st of each year during contract performance. The United States Department of Agriculture (USDA) is implementing a web-based portal designed to consolidate government-wide reporting. The web-based portal is scheduled to be available for contractors by October 31, 2012.

To ensure contractor use of the web-based portal for this reporting period, agencies are encouraged to issue a class deviation, in accordance with FAR 1.404, to extend the reporting deadline contained in paragraph (c)(2) of the clause at FAR 52.223-2 from October 31, 2012 to December 31, 2012. Agencies should also notify contractors of the USDA web-based portal at <http://www.biopreferred.gov> for satisfying the reporting requirements of the clause, including the reporting template under "Key Initiatives," or at <http://www.biopreferred.gov/FARReporting/FARReporting.xhtml>.

This CAAC memorandum constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1). Agencies are reminded that FAR 1.404 requires agencies to furnish a copy of each approved class deviation to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB).  
ATTN: Hada Flowers at [hada.flowers@gsa.gov](mailto:hada.flowers@gsa.gov).

If you have questions or require additional information regarding this memorandum, please contact Marissa Petrusek at (202) 501-0136 or by email at [marissa.petrusek@gsa.gov](mailto:marissa.petrusek@gsa.gov)